

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

BENJAMIN HORTON,

Plaintiff,

-against-

8:21-CV-983 (LEK/CFH)

SCHENECTADY COUNTY, *et al.*,

Defendants.

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**MEMORANDUM-DECISION AND ORDER**

**I. INTRODUCTION**

Plaintiff Benjamin Horton brings this pro se action pursuant to 42 U.S.C. § 1983 against Schenectady County, City of Schenectady Police Department (“SPD”), Detective Joseph McCabe (“McCabe”), and Investigator Jason DeLuca (“DeLuca”) (collectively, “Defendants”). Plaintiff alleges that Defendants committed multiple constitutional and state violations in their investigation, arrest, and prosecution of Plaintiff, thus violating Plaintiff’s Fourth, Fifth, Sixth, and Fourteenth Amendment protections and various state laws. See Dkt. No. 14 (“Amended Complaint”). The Honorable Christian F. Hummel, United States Magistrate Judge, reviewed Plaintiff’s initial complaint, Dkt. No. 1, and recommended that the complaint be dismissed. See Dkt. No. 7. After Plaintiff filed objections, Dkt. No. 8, this Court modified in part, rejected in part, and adopted in part Judge Hummel’s recommendations. See Dkt. No. 10.

Plaintiff later filed the Amended Complaint, and on February 17, 2023, Judge Hummel issued a report and recommendation regarding the Amended Complaint. Dkt. No. 16 (“Report and Recommendation”). Judge Hummel recommended that Plaintiff’s Fourth, Sixth, and Fourteenth Amendment claims against McCabe and DeLuca be permitted to proceed; that Plaintiff’s pendent state law claims against all Defendants be allowed to proceed; that any

purported Miranda<sup>1</sup> or Monell<sup>2</sup> claim against SPD, or any purported claim against the county court or jurors be dismissed with prejudice and without leave to amend; and all other claims be dismissed without prejudice and without leave to amend. Id. at 30–31.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

## **II. BACKGROUND**

The Court assumes familiarity with Judge Hummel’s Report and Recommendation, as well as with Plaintiff’s factual allegations as detailed therein. See R. & R. at 5–6.

## **III. STANDARD OF REVIEW**

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of the court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y.

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>2</sup> Monell v. Dep’t of Soc. Servs. of City of New York, 436 U.S. 658 (1978).

2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

#### IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

#### V. CONCLUSION

Accordingly, it is hereby:

**ORDERED**, that the Report and Recommendation (Dkt. No. 16) is **APPROVED and ADOPTED in its entirety**; and it is further

**ORDERED**, that Plaintiff’s Fourth, Sixth, and Fourteenth Amendment claims against McCabe and DeLuca, and pendent state law claims against all Defendants are **PERMITTED TO PROCEED** and require a response; and it is further

**ORDERED**, that any Miranda or Monell claims against the City of Schenectady Police Department, and any purported claims against the county court and jurors be **DISMISSED with prejudice and without leave to amend**; and it is further

**ORDERED**, that all other claims be **DISMISSED without prejudice and without leave to amend**; and it is further

**ORDERED**, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: August 30, 2023  
Albany, New York



LAWRENCE E. KAHN  
United States District Judge